

Macco & Stern, LLP
135 Pinelawn Road, Suite 1230 South
Melville, New York 11747
(631) 549-7900

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X *Return Date: 7/14/14 @ 9:30 am*
In re Chapter 7

Laurie R. Montalto

14-71323-reg

Debtor.

AFFIDAVIT IN OPPOSITION

-----X
STATE OF NEW YORK)
COUNTY OF SUFFOLK)ss:-

MICHAEL J. MACCO, being duly sworn, deposes and says:

1. I am the attorney for the debtor, Laurie R. Montalto, and as such am fully and completely familiar with the facts and circumstances involved herein.

2. I submit this Affidavit in opposition to the motion filed by the United States Trustee's Office seeking dismissal of this Chapter 7 pursuant to Section 11 U.S.C. 707(b)(1), (2) and (3).

3. The United States Trustee's Office claims that the reason that the presumption arises and the case should be dismissed is several fold and are detailed in paragraphs 37(b), (c), (d), (e), (f), (g), (h) and (i) of the United States Trustee's Motion.

4. Debtor has filed an amended means test in partial conformance of the U.S. Trustee's objection and has fully resolved the objections for income taxes (paragraph 37(d)), the third automobile (paragraph 37(b)), the health care (paragraph 37(f)) and the charitable contribution (paragraph 37(h)). The Amended Means Test still indicates that the Debtor is eligible for a Chapter 7 discharge. The Debtor's Schedule I and J also indicate the Debtor is entitled to a Chapter 7 discharge.

5. The first objection that the United States Trustee has is that in the marital adjustment debtor took separate expenses for the non-filing spouse's car payment and \$342 credit card payments and \$102.62 for a loan repayment. At the time of the filing of the bankruptcy petition, the debtor's spouse was responsible for these expenses, including a car that the lease expired in June of 2014. The debtor was smart enough to lease a new vehicle prior to filing, but the expense for the car that was being returned was still an expense until the lease expired. That car that was being returned was an actual expense to the debtor and paid post filing. Furthermore, the actual expense on the date of filing was the \$468.48. Since the United States Trustee is now contending a looking-forward approach, the third automobile is being removed from the amended means test but there is an increase in child care effective September 1, 2014 being included. Furthermore, the U.S. Trustee objects to the debtor's non-filing spouse taking credit card payments of \$342 stating that the charges set forth in the non-filing spouse's credit cards were for household expenses. This is simply not true. The charges in the non-filing spouse's credit cards were for extraordinary expenses, including Termix, household repairs, car repairs, fence repairs and a cesspool repair. These were all unexpected expenses and the Debtor's spouse needs to pay the credit cards on which these expenses were charged. Annexed hereto as Exhibit "A" are copies of receipts for those repairs. Lastly, the non-filing spouse has a 401(K) loan which he is required to repay and is not discharged by his wife's bankruptcy. It defies explanation why the debtor's non-filing spouse cannot take a deduction for a 401(K) loan as a marital deduction that the non-filing spouse is liable. In addition, the non-filing spouse is also entitled to an additional expense on the marital

adjustment of \$447 for unreimbursed business expenses, which is consistent with the debtor's 2013 tax returns.

6. As to line 37(c), the U.S. Trustee states that the debtor is not entitled to two transportation, ownership and lease expenses since she only owns one vehicle. However, this is contrary to the complete intent of the means test. The means test sole purpose is to capture all the household income and expenses. All of the debtor's non-filing spouse's income is listed in the means test and the household paid for three cars on the date of filing and is certainly entitled to two transportation, ownership and lease expenses set forth in line 23 and 24 of the means test. This is the only section of the means test that the U.S. Trustee is stating that the non-filing spouse can't take an additional expense for, since everything else in the means test is for a family of three.

7. As for paragraph 37(d) regarding the debtor's income tax obligation, the debtor agrees that the proper deduction in line 30 is the \$2,858 set forth in the motion. Annexed hereto is an amended means test with the tax corrections and other corrections set forth.

8. As to paragraph 37(e) regarding the debtor's child care expense of \$570, the debtor was paying her mother-in-law \$100 a week to care for their child in cash and \$170 a month for school. Unfortunately, the debtor's mother-in-law is overwhelmed and starting in September the debtor's child is going into pre-school at an expense of \$816 a month. Since the U.S. Trustee's office is taking a forward-looking approach, this \$816 is a proper expense going forward.

9. As to paragraph 37(f), the debtor agrees that the health care expense set forth in line 31 should be removed since at the present time the debtor is unable to document additional expense on reimbursed expenses over the \$180 allowed by the IRS standard.

10. As to paragraph 37(g) regarding the telecommunications expense taking of \$100, the debtor's non-filing spouse is in sales and has to be in constant communication with both his office and his clients. Furthermore, since the debtor is employed and has a minor children, the debtor's spouse needs to keep in communication with the childcare provider at all times. The \$100 deduction is not close to the actual expenditures of this house.

11. Lastly, the debtor and her spouse were not current on their mortgage on the date of filing and the amended means test has a line 43 deduction to reflect the mortgage arrears.

WHEREFORE, it is respectfully requested that the motion to dismiss be denied.

Dated: Melville, New York
June 26, 2014


Yours, etc.

Michael J. Macco
Macco & Stern, LLP
Attorneys for Debtor
135 Pinelawn Road, Suite 120 South
Melville, New York 11747
(631)549-7900

STATE OF NEW YORK)
COUNTY OF SUFFOLK)ss:-

Carol Smith, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age, and resides at West Islip, New York.

On June 30, 2014 deponent served the within:

AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS

upon the following parties, at the addresses designated by said parties for that purpose, by depositing a true copy of same, enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

*Office U.S. Trustee
Long Island Federal Courthouse
560 Federal Plaza, Room 560
Central Islip, NY 11722*

*Kenneth P. Silverman, Esq.
Silverman Acampora LLP
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753*


Carol Smith

Sworn to before me this
30th day of June, 2014

/s/ Jeanette Hodgins

Notary Public

Jeanette Hodgins

Notary Public, State of New York

No. 01HO6071591

Qualified in Suffolk County

Commission Expires March 18, 2015

EXHIBIT A

TERMINIX

Power over pests:

7534 0300 00 RP 26 05262014 NYYNYNN 0009747 33 T34

9749 1 AT 0.403



MONTALO, BRIAN
1967 LOUIS KOSSUTH AVE
RONKONKOMA NY 11779-6422



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Customer Number: 9732274 and phone number
to start paying bills online.

STATEMENT OF ACCOUNT

My Customer Number: 9732274

Please Pay By: 06/09/2014

Total Due: \$413.24



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Customer: Terminix.com



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1.800.TERMINIX



QUESTIONS
• Local Office: 631.345.6910
• Toll Free: 1.800.TERMINIX
• Online: Terminix.com

SERVICE DATE	DESCRIPTION OF SERVICES & SERVICE ADDRESS	INVOICE NUMBER	CHARGES	PAYMENTS / CREDITS	NET AMOUNT
05/24/2014 05/23/2014	Terminix Bait System Sentricon Payment Applied: Reg Financing Location: 1967 LOUIS KOSSUTH AVE, RONKONKOMA NY 11779	335278857 SM-FIN-20140523	\$2,043.24	\$1,630.00-	\$413.24

Due Date: 06/09/2014

Total Due: \$413.24

This statement reflects payments received by 05/26/14. If you have not paid your previous balance, please mail your payment today.
Business License: 09015

Please tear along line to remit.



Payment Options:

- EasyPay automated payments (sign up at Terminix.com)
- Pay online at My Account at Terminix.com
- Pay by phone at 1.800.TERMINIX
- Pay by enclosed check
- Credit card payment. Please fill out the following:

Circle One: DISCOVER VISA MasterCard American Express SEARS
() Exp date: /

Name (as it appears on credit card):

Authorized Signature:

Amount Due: \$413.24

Amount Paid:

Sign up for
EasyPay automated
payments at
Terminix.com

Sales Agreement: 14018236
Customer Number: 9732274

MONTALO, BRIAN
1967 LOUIS KOSSUTH AVE
RONKONKOMA NY 11779

REMIT TO:
TERMINIX PROCESSING CENTER
P.O. BOX 742592
CINCINNATI OH 45274-2592

3 00000000 11 000097322748 000000000000140192360 0004132400041324 9

ORDER NO: 115548-00
 ORDER DATE: 6/14/14
 PRINTED: 6/14/14
 14:43:11

WINDOW Rama®

499 WEST SUNRISE HWY
 PATCHOGUE, NY 11772
 631-289-7667

PAGE.. 1

SALES ORDER

Salesperson	Fax	Delivery Type	Terms	Acct #
GARY HERRMANN	631-289-4602	Direct to Store	COD	899467

Sold To

MONTALTO
 1967 LOUIS KOSSUTH AVE
 RONKONKOMA, NY 11779

PHONE- 516-779-7000

Ship To

PATCHOGUE
 499 WEST SUNRISE HWY
 PATCHOGUE, NY 11772

PHONE- 516-779-7000
 CUST PO#-

CROSS
 STREET

Qty	Product ID	Description	Swings/Loc	Unit Price	Extended
1	* FIRE-DOOR	FIRE DOOR NO CANCELLATION/RETURN/REFUNDS		419.00	419.00
	*** Type of Door?	Fire Door			
	*** Style	SE1005HD			
	*** Single Swing Fire Rated	Single Swing			
	*** size	2/8			
	*** What height	6/8			
	*** Frame size	4 1/2 - 5 1/2 **			
	*** Hinge Type	Self Closing Hinges			
	*** Bore type	Dbl Bore 2 3/8 ***			
	*** Ask Customer about Locks	NO			
	*** Removeable grill	No-Removeable grilles			
	*** Inswing *****	Yes Inswing *****			
	*** Pulling door	Knob right *****			
	*** Installed Opt?	No			
	*** Rough Opening	X			
	*** Special Instr.	X			
	*** Special instr.	X			
	*** Special instr.	X			
	*** Special instr.	X			

HINGE-->

x

<--KNOB

VIEWED FROM INSIDE

DOOR WILL SWING TOWARD YOU

(Continued on Next Page)

* = This is Custom Merchandise

1831 SUNRISE HWY. BAYS-ORE NY 11706
STORE MGR ROCKY RYAN (631)666-3800

1211 00056 76937 04/02/14 10:38 AM
CASHIER SELF CHECK OUT - SCOT56

845779006163 36X80 PREHNS <A,U> 519.00
35X80 RH LAK PAT C-ARCH MAH FG PH BM
098945070318 CEDAR SHIMS <A> 3.98
PROFESSIONAL BUILDER SHIM PK
043156171200 DEADBOLT <A> 35.84
SCHLAGE DEADBOLT SGL CYL ABZ
043156171514 ADD/ACC 615 <A> 139.00
SCHLAGE ADD K ACC HANDLESET SN
034778219685 STORM DOOR <A> 287.00
35" 4000 FULLVIEW NICHEL HDW WHITE

SUBTOTAL 984.82

SALES TAX 84.94

TOTAL \$1,069.76

XXXXXXXXXXXX8352 DEBIT
AUTH CODE 761411

<U> - NON-DISCOUNTABLE ITEM



1211 56 76937 04/02/2014 7741

RETURN POLICY DEFINITIONS
POLICY ID DAYS POLICY EXPIRES ON
A 1 90 07/01/2014
THE HOME DEPOT RESERVES THE RIGHT TO
LIMIT / DENY RETURNS. PLEASE SEE THE
RETURN POLICY SIGN IN STORES FOR
DETAILS.

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TO WIN A \$5,000
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CARD!

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ENCUESTA PARA LA OPORTUNIDAD DE GANAR.

User ID:
2PX2 155374 154219

Password:
14202 154163

Entries must be entered by 05/02/2014.
Entrants must be 13 or older to enter.
See complete rules on website. No
purchase necessary.

two days.

1 per 5 times

SALES DRAFT

BABYLON HONDA
650 MONTAUK HWY
WEST BABYLON, NY 11704
TERMINAL 4981598

284200447593
03/03/2014 12:00:00

VISA
XXXXXXXXXXXX0352
AUTH. TRANS. ID. 464062616654216SSKSE 90
INVOICE 173401 He2
AUTH. CODE 060712

SALE TOTAL \$739.29

CUSTOMER COPY

Issued By:
Allstate Fire and Casualty Insurance Company
Long Island Auto MCO
KENNETH BUSCH

Check:
Issued Date:
Amount:

551228988
3/3/2014
2,480.37

AVE,
779-6422 US
Comprehensive Full Glass Coverage for Date of Loss 2/21/2014.

Transaction
Reason
Glass Coverage
Vandal & Malice Mischief

Billed
Amount

Amount To
Pay

2,480.37 USD

07118 FCP

Power Mirrors
Power Driver Seat
DECOR
Dual Mirrors
Console/Storage
CONVENIENCE
Air Conditioning

Steering Wheel Touch Controls
Telescopic Wheel
Climate Control
Backup Camera w/Parking Sensors
RADIO
AM Radio
FM Radio

Anti-Lock Brakes (4)
4 Wheel Disc Brakes
Front Side Impact Air Bags
Head/Curtain Air Bags
Hands Free Device
SEATS
Cloth Seats

Traction Control
Stability Control
Rear Spoiler
Power Trunk/Gate Release

3/3/2014 9:31:42 AM


110245

Page 1



650 Montauk Highway, W. Babylon, NY 11704 • Service: 631-669-3110 • Parts: 631-669-5800

CELL: 516-779-700

CUSTOMER NO.	186957	ADVISOR	REED C	TAG NO	60 9999	INVOICE DATE	03/03/14	INVOICE NO	HOC5179401
BRIAN V MONTALTO 1967 LOUIS KOSSUTH AVE RONKONKOMA, NY 11779-6422	LABOR RATE	110.00	LICENSE NO	GGN4402	MILEAGE	10,584	COLOR	ALBSTR SILV	STOCK NO
	YEAR / MAKE / MODEL	13/HONDA/ACCORD SEDAN/4DR SDN I4 SPT				DELIVERY DATE	06/07/13	DELIVERY MILES	3
	VEHICLE ID NO	1 H G C R 2 F 5 0 D A 1 8 1 3 0 0				SELLING DEALER	PRODUCTION DATE		
	F.T.E. NO.	P.O. NO				INVOICE DATE	03/03/14		
RESIDENCE PHONE	631-588-0390	BUSINESS PHONE				COMMENTS	MO: 10584		
TOTALS MY SERVICE ADVISOR HAS ADEQUATELY EXPLAINED THE WORK THAT WAS PERFORMED ON MY VEHICLE AND THE COST, IF ANY, ASSOCIATED WITH THESE REPAIRS OR MAINTENANCE AS AUTHORIZED **SPECIAL ORDERED ELECTRICAL AND TRIM PARTS ARE FINAL SALE** METHODS OF PAYMENT: CASH, VISA, M/CARD, AMEX, DISCOVER & AUTHORIZED CHECK WITH PROPER IDENTIFICATION SATURDAY PARTS AND SERVICE HOURS 7:30AM-3:30PM PARKING LOT LOCATION (OUT): CUSTOMER'S PREFERRED FOLLOWUP CONTACT PHONE: CONTACT TIME: PRIMARY# : AM : PM SECONDARY#									
TOTAL LABOR.... 56.40 TOTAL PARTS.... 2898.40 TOTAL SUBLET... 0.00 TOTAL G.O.G.... 0.00 TOTAL MISC CHG. 10.00 TOTAL MISC DISC 0.00 TOTAL TAX..... 254.86 TOTAL INVOICE \$ 3219.66					LIMITED EXPRESS WARRANTY LABOR AND PARTS ARE WARRANTED FOR 90 DAYS OR 4,000 MILES WHICHEVER OCCURS FIRST. THE DEALER HEREBY LIMITS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS TO THE SAME PERIOD. PLEASE CALL FOR FUTURE APPOINTMENTS BETWEEN 9:00 A.M. AND 4:00 P.M. MONDAY THRU FRIDAY AT (631) 669-3110. ALL CARS ARE TO BE PICKED UP DURING BUSINESS HOURS BETWEEN 7:00 A.M. AND 7:00 P.M. MONDAY THRU FRIDAY. ALL WORK C.O.D. CUSTOMER ACKNOWLEDGES RECEIPT OF A COPY HEREOF X NYS-MV REG. NO. R 152 0009 <i>user 139.29</i> <i>allstate 2480.37</i>				
CUSTOMER SIGNATURE 									

PVC FENCE OF
LONG ISLAND INC
1801 LAKELAND AVE
RONKONKOMA, NY 11779
631-588-4400

C O P Y
05/03/2013 09:56:19

Sale:

Transaction # 1
Card Type: *****4441
Auth: Date: Swiped
Exp. 100
Entry: 2000.00
Invoice #
Amount
Reference No.: 00118061
Auth Code: 05363A
Response: CAPTURE 05363A

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FENCE, INC.

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Ronkonkoma, NY 11779
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Fax (631) 588-4594

CUSTOMER MUST BE HOME AT THE TIME OF
INSTALLATION AND PROVIDE SURVEY.

APPROX. COMPLETION DATE

Date

Phone #

Work #

COLOR

VC

ALUMINUM

CHAIN LINK

FRAMEWORK

TOTAL FOOTAGE

TERMINALS

LINEPOST

WALKGATE

DRIVEGATE

SLATS

COILWIRE

GAPS MAY EXIST UNDER FENCE.

TAKEDOWN

5/13/14

516 779 7000

Montalto
Louis Kesseth

COLOR

CHAIN LINK

FRAMEWORK

TOTAL FOOTAGE

TERMINALS

LINEPOST

WALKGATE

DRIVEGATE

SLATS

COILWIRE

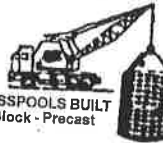
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☐ Main Line☐ Pipe Connecting Cesspools ☐ Kitchen Sink ☐ Bathroom Sink☐ Bath Tub ☐ Toilet Bowl ☐ Other:☒ PUMPED CESSPOOL (No Guarantee Available) 320☒ DIGGING FEE 2 ft 70

CHEMICAL CLEANING CESSPOOL

SERVICE CHARGE

TRAP CAPS ☐ 3 1/2" ☐ 4" ☐ 5"COMMENTS: Cost did not want
to do overflow

Purchaser shall provide access to job site. It shall be the obligation of the Purchaser to inform the Service Company of any above or below ground or hidden perils. The Seller shall not be responsible for damage above or below ground to property or hidden perils. Signer assumes liability representatively and personally for payment of contract amount.

SUB TOTAL 370TAX 31.91TOTAL 401.91DATE PAID 9/20/13CHECK NO. 407

AMT. REC'D

☐ CASH ☐ M/C ☐ VISA ☐ DEBIT BILL
☐ AMEX ☐ DISCOVER

GENERATOR SIGNED STATEMENT

I, [Signature], hereby affirm that I am the owner, or user, of the Individual Sewage Disposal Facility (septic tank/leaching facilities) located at the address of the Invoice and:

(1) That the facilities to be pumped contain only sanitary sewage; (2) That I have not been notified by the Suffolk County Department of Health or the Nassau County Department of Health to have this system pumped by a licensed industrial hauler. That neither I nor any person in my family illegally dumped, and that I make this Statement knowing that the waste will be disposed of at a Municipal Septage Treatment Facility and that in the event that any chemical solvent waste or industrial waste of any kind have been added, legal action may be undertaken by the appropriate regulatory agency against any or all parties involved.

"I, hereby affirm under penalty of perjury that information provided on this form is true to the best of my knowledge and belief. False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law."

Customer's Signature

Date